

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

NOV 11 2003
D3Mg
By: Jackson

IN RE: TRI-STATE :
CREMATORY LITIGATION : MDL DOCKET NO. 1467

**FUNERAL HOME DEFENDANTS' RESPONSE TO
PLAINTIFFS' REQUEST FOR PERMISSION TO SUBMIT
A SUPPLEMENTAL BRIEF IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT FILED BY W.L. WILSON & SONS**

The Funeral Home Defendants and Defendant W.L. Wilson & Sons ("Wilson & Sons") respectfully submit this Response to Plaintiffs' Request for Permission to Submit a Supplemental Brief in Opposition to Motion for Summary Judgment Filed by Wilson & Sons.

The Funeral Home Defendants and Wilson & Sons do not oppose a supplemental brief filed by Plaintiffs addressing new information, if any, gained from the second deposition of Leroy Wilson. Mr. Wilson's second deposition was limited to thirty minutes and scheduled for November 5, 2003. As Plaintiffs acknowledge, Wilson & Sons should be permitted to file a reply to Plaintiffs' supplemental brief.

The Funeral Home Defendants and Wilson & Sons, however, do object to Plaintiffs' plan to address other allegedly new topics in the supplemental brief. Plaintiffs have not identified any other new evidence or explained why they could not have covered the evidence disclosed during discovery in the prior briefing schedule.

Therefore, Plaintiffs should be barred from addressing in the supplemental brief any other topic besides Leroy Wilson's testimony in his November 5th deposition.

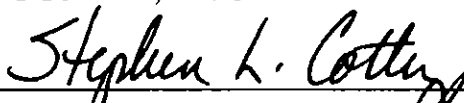

Further, Plaintiffs reference the need to address responses to discovery requests served on Wilson & Sons. The Court has granted a motion for protective order as to these discovery requests. Accordingly, there is no need to address this topic in the supplemental brief.

For the reasons discussed herein, the Funeral Home Defendants and Wilson & Sons respectfully request that the Court limit Plaintiffs' supplemental brief to only new information gained from the thirty minute deposition of Leroy Wilson.

Respectfully submitted this 13th day of November, 2003.

SWIFT, CURRIE, McGHEE & HIERS, LLP

The Peachtree
1355 Peachtree Street, N.E.
Suite 300
Atlanta, Georgia 30309-3238
(404) 874-8800


By: 
Stephen L. Cotter
Georgia Bar No. 189725 
Maren R. Frost
Georgia Bar No. 278448
James D. Johnson
Georgia Bar No. 394598

Attorneys for Defendant
W.L. Wilson & Sons Funeral Home

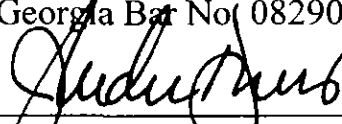
(Signatures continued)

**BRINSON, ASKEW, BERRY, SEIGLER,
RICHARDSON & DAVIS, LLP**

The Omberg House
615 West First Street
Post Office Box 5513
Rome, GA 30162-5513
Phone 706/291-8853
Fax 706/234-3574

By: 

Robert M. Brinson
Georgia Bar No. 082900

By: 

J. Anderson Davis
Georgia Bar No. 211077

Lead and Liaison Counsel for
Defendant Funeral Homes

CERTIFICATE OF SERVICE

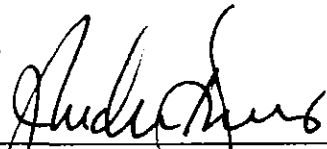
This is to certify that I have this day served counsel for all parties with a copy of the within and foregoing **Funeral Home Defendants and W.L. Wilson & Sons' Response to Plaintiffs' Request for Permission to Submit a Supplemental Brief in Opposition to Motion for Summary Judgment filed by W.L. Wilson & Sons** by causing a copy of same to be placed in first class U.S. mail with adequate postage affixed thereto and addressed as follows:

Robert H. Smalley, III, Esquire
McCAMY, PHILLIPS, TUGGLE & FORDHAM, LLP
Post Office Box 1105
Dalton, GA 30720-1105
Liaison for Plaintiffs

McCracken Poston, Jr., Esquire
OFFICE McCRACKEN POSTON
Post Office Box 1130
Ringgold, GA 30736
Counsel for Tri-State Crematory, Inc.

Frank E. Jenkins, III, Esquire
JENKINS & OLSON
15 Public Square, South
Cartersville, GA 30120-3350
Counsel for the Marsh Family

This 13th day of November, 2003.



J. Anderson Davis

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

2003
R. Jackson

IN RE: TRI-STATE CREMATORY) MDL DOCKET NO. 1467
LITIGATION)
)
This relates to all actions.)

**RESPONSE OF PEEPLES FUNERAL HOME, INC.,
JONES FUNERAL HOME, INC., AND BURT FUNERAL HOMES, INC.
TO PLAINTIFFS' CONCISE STATEMENT OF UNCONTESTED
MATERIAL FACTS IN SUPPORT OF THEIR MOTION
FOR PARTIAL SUMMARY JUDGMENT**

COME NOW Defendants Peeples Funeral Home, Inc. (hereinafter "Peeples"), Jones Funeral Home, Inc. (hereinafter "Jones"), and Burt Funeral Homes, Inc. (hereinafter "Burt") and hereby incorporate by reference Funeral Home Defendants' Response To Plaintiffs' Concise Statement Of Uncontested Material Facts In Support Of Their Motion For Partial Summary Judgment filed contemporaneously herewith by Liaison Counsel for the Funeral Home Defendants. Additionally, Peeples, Jones, and Burt supplement Funeral Home Defendants' Response to Plaintiff's Concise Statement of Uncontested Material Facts in Support of Their Motion for Partial Summary Judgment and show this honorable Court as follows:

41. Each of the Funeral Home Defendants currently a party in the within and foregoing action utilized Tri-State Crematory for cremation services during at least some portion of the class period, 1988-2002.

SUPPLEMENTAL RESPONSE OF PEEPLES, JONES, AND BURT:

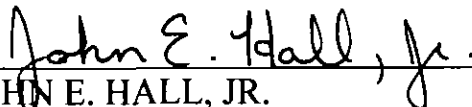
It is not disputed that between the early 1980's and April of 2001 Peeples Funeral Home, Inc. utilized Tri-State Crematory facility, as well as other crematories, for crematory services. It is not disputed that Jones Funeral Home, Inc. used the Tri-State Crematory facility for crematory services between 1988 and 1995. From 1988 to 1995, Jones sent sixteen (16) bodies to Tri-State for cremation. It is not disputed that Burt Funeral Homes, Inc. used the cremation services of Tri-State and sent only four (4) bodies there for cremation, with the last body sent on or about January 1, 1997.

This 13th day of November, 2003.

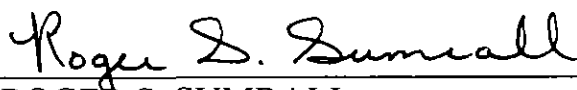
Respectfully submitted,

[Signatures on following page]

HALL, BOOTH, SMITH & SLOVER, P.C.



JOHN E. HALL, JR.
Georgia Bar No. 319090



ROGER S. SUMRALL
Georgia Bar Number 004490
Attorneys for Defendants Burt Funeral
Homes, Inc., Jesse Jones Funeral Home, Inc.
and Peeples Funeral Home, Inc.

1180 West Peachtree Street, N.W.
Suite 900
Atlanta, Georgia 30309
Phone (404) 954-5000
Fax (404) 954-5020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing **RESPONSE OF PEEPLES FUNERAL HOME, INC., JONES FUNERAL HOME, INC., AND BURT FUNERAL HOMES, INC. TO PLAINTIFFS' CONCISE STATEMENT OF UNCONTESTED MATERIAL FACTS IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT** upon all parties to this matter by depositing a true copy of same in the United States Mail, in a properly addressed envelope with adequate postage thereon to the counsel of record as follows:

PLAINTIFFS' LIAISON COUNSEL:

Robert H. Smalley, III, Esq.
McCAMY, PHILLIPS, TUGGLE & FORDHAM, LLP
P.O. Box 1105
Dalton, Georgia 30720-1105

PLAINTIFFS' LEAD COUNSEL:

Elizabeth J. Cabraser, Esq.
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
Embarcadero Center West
275 Battery Street, 30th Floor
San Francisco, California 94111

**COUNSEL FOR SCI DEFENDANTS AND LEAD AND
LIAISON COUNSEL FOR FUNERAL HOME DEFENDANTS:**

J. Anderson Davis, Esq.
Robert M. Brinson, Esq.
BRINSON, ASKEW, BERRY, SEIGLER,
RICHARDSON & DAVIS, LLP
The Omberg House
615 West First Street
P.O. Box 5513
Rome, Georgia 30162-5513

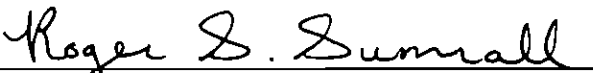
**LIAISON/LEAD COUNSEL FOR DEFENDANTS,
T. RAY BRENT MARSH & TRI-STATE CREMATORY:**

McCracken K. Poston, Jr., Esq.
OFFICE OF MCCRACKEN POSTON, JR.
P.O. Box 1130
Ringgold, Georgia 30736

Frank E. Jenkins, III, Esq.
JENKINS & OLSON
15 South Public Square
Cartersville, GA 30120-3350

This 13th day of November, 2003.

HALL, BOOTH, SMITH & SLOVER, PC



ROGER S. SUMRALL
Georgia Bar Number 004490

1180 West Peachtree Street, N.W., Suite 900
Atlanta, Georgia 30309
Phone (404) 954-5000; Fax (404) 954-5020

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
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A. Jackson

IN RE: TRI-STATE CREMATORY) MDL DOCKET NO. 1467
LITIGATION)
)
This relates to all actions.)

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1

The undersigned hereby certifies that pursuant to Local Rules 5.1 and 7.1D, the within and foregoing Response of Peebles Funeral Home, Inc., Jones Funeral Home, Inc., and Burt Funeral Homes, Inc. to Plaintiffs' Motion for Partial Summary Judgment; and Response of these Defendants to Plaintiffs' Concise Statement of Uncontested Material Facts in Support of their Motion for Partial Summary Judgment were prepared using Times New Roman, 14-point font.

This 13th day of November, 2003.

HALL, BOOTH, SMITH & SLOVER, PC

Roger S. Sumrall

ROGER S. SUMRALL

Georgia Bar Number 004490

1180 West Peachtree Street, N.W., Suite 900

Atlanta, Georgia 30309

Phone (404) 954-5000

Fax (404) 954-5020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing **CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1** upon all parties to this matter by depositing a true copy of same in the United States Mail, in a properly addressed envelope with adequate postage thereon to the counsel of record as follows:

PLAINTIFFS' LIAISON COUNSEL:

Robert H. Smalley, III, Esq.
McCAMY, PHILLIPS, TUGGLE & FORDHAM, LLP
P.O. Box 1105
Dalton, Georgia 30720-1105

PLAINTIFFS' LEAD COUNSEL:

Elizabeth J. Cabraser, Esq.
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
Embarcadero Center West
275 Battery Street, 30th Floor
San Francisco, California 94111

**COUNSEL FOR SCI DEFENDANTS AND LEAD AND
LIAISON COUNSEL FOR FUNERAL HOME DEFENDANTS:**

J. Anderson Davis, Esq.
Robert M. Brinson, Esq.
BRINSON, ASKEW, BERRY, SEIGLER,
RICHARDSON & DAVIS, LLP
The Omberg House
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P.O. Box 5513
Rome, Georgia 30162-5513

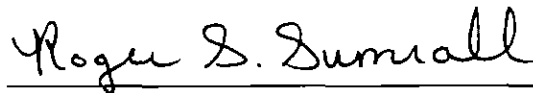
LIAISON/LEAD COUNSEL FOR DEFENDANTS,
T. RAY BRENT MARSH & TRI-STATE CREMATORY:

McCracken K. Poston, Jr., Esq.
OFFICE OF MCCRACKEN POSTON, JR.
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Frank E. Jenkins, III, Esq.
JENKINS & OLSON
15 South Public Square
Cartersville, GA 30120-3350

This 13th day of November, 2003.

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ROGER S. SUMRALL

Georgia Bar Number 004490

1180 West Peachtree Street, N.W., Suite 900
Atlanta, Georgia 30309
Phone (404) 954-5000; Fax (404) 954-5020